

From: Jerry Whelan
To: Microsoft ATR
Date: 1/24/02 9:34pm
Subject: Microsoft Settlement

Dear Sirs,

I am writing to express my disapproval of the proposed DOJ vs Microsoft settlement. I believe that the settlement terms are not in line with the finding of facts regarding Microsoft abusing its position as a de facto monopoly - in general the punishment contained in the settlement is a far cry from being a deterrent towards future abuses by Microsoft and in some ways actually encourages anti-competitive behavior going forward. One particular issue that I have with the proposed settlement is that it allows Microsoft to leverage its monopoly position to very strongly inhibit the proliferation of Opensource Software.

Opensource Software is a brand new and truly innovative way of thinking about how software should be developed, distributed and used and as such it has a potentially critical role to play in the forward progress of our nation and the world as a whole. Unfortunately, the terms of the settlement allow Microsoft to prohibit the distribution of their software in conjunction with Opensource Software. Microsoft has been known to make the completely specious argument that a third party distributing their for-pay or free software in conjunction with Opensource software somehow weakens Microsoft's intellectual property rights on their own software. Nothing could be further from the truth - it should be immediately obvious to anyone that any such actions by a third party can in no way obligate Microsoft to reduce their intellectual property rights. That would be the equivalent of saying that because a library allows you to borrow a book for free, the publisher of the book is now obligated to give away free copies to anyone who asks for one. Simply ridiculous!

Nevertheless, the proposed settlement allows Microsoft to forbid distribution of their software in any conjunction whatsoever with Opensource software. And, Microsoft is already abusing its monopoly position to do just this exact thing. For example, the license agreement for the Microsoft Windows Media Encoder 7.1 Software Developer's Kit forbids the distribution of any software developed with that kit in any combination with Opensource software. Clearly this forbids a third-party developer from even using the Kit to develop Opensource software - which then just serves to reinforce Microsoft's monopoly position at the cost of the consumer and the independent developer.

The issue of Microsoft's licensing policies stunting Opensource growth and distribution is but one of many problems with the proposed settlement, however I think that it is clearly a key problem that at, an absolute minimum, must be addressed before any settlement becomes final.

Thank you,

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